

Staff Summary Report



Council Meeting Date: July 22, 2008

Agenda Item Number: _____

SUBJECT: Request approval of a resolution authorizing the execution of a License for Public Parking with **UNIVERSITY SQUARE INVESTORS, LLC**, an Arizona limited liability company.

DOCUMENT NAME: 20080722cdcm01 **COMMUNITY DEVELOPMENT/REDEVELOPMENT ADMIN (0403-01) RESOLUTION NO. 2008.54**

SUPPORTING DOCS: Yes

COMMENTS: Request approval of Resolution 2008.54 authorizing the Mayor to execute a License for Public Parking with **UNIVERSITY SQUARE INVESTORS, LLC**, an Arizona limited liability company.

PREPARED BY: Chris Messer, Principal Planner (480-350-8562)

REVIEWED BY: Chris Salomone, Community Development Manager (480-350-8294)

LEGAL REVIEW BY: Cynthia McCoy, Assistant City Attorney (480-350-2187)

FISCAL NOTE: **University Square Investors LLC will not charge the City rent for an initial period of three years; after that period, University Square Investors LLC and the City shall reevaluate all fees and revenues.**

RECOMMENDATION: Approval of Resolution No 2008.54 as presented

ADDITIONAL INFO: To provide additional parking in the southeast quadrant of the downtown, the City intends to construct a surface parking lot on property owned by University Square Investors LLC. The property is located on the south east corner of 7th Street and Myrtle Avenue. Resolution 2008.54 authorizes the Mayor to execute the License.

The key points in the license are:

- The property owner will not charge the City rent for three years,
- The City will design, construct, maintain, operate, and remove the parking lot.

Other info regarding the lot

- The parking lot will be metered, similar to other downtown lots,
- The revenue from the meters will be retained by the City during the first 3 years and will be used to pay for the operation and maintenance. Remaining revenue will reimburse City for the construction costs.
- The DTC will operate and maintain the parking lot.

RESOLUTION NO. 2008.54

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LICENSE FOR PUBLIC PARKING ON THE SOUTH EAST CORNER OF SEVENTH STREET AND MYRTLE AVENUE.

WHEREAS, University Square Investors, LLC owns Lots 5, 6, and 7 of Birchett Tract, according to the Plat of Record in the office of the Maricopa County Recorder in Book 27 of Maps , Page 9 (the "Property"); and

WHEREAS, the City of Tempe intends to construct and maintain a temporary parking lot on the Property; and

WHEREAS, the City Council has reviewed the proposed License for Public Parking attached as Exhibit A (the "License"); and

WHEREAS, University Square Investors, LLC has executed the License.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TEMPE, ARIZONA, AS FOLLOWS:

That the Mayor or his designee is authorized to execute a License for Public Parking, in substantially the form attached hereto, a copy of which is on file with the City Clerk's office, and to take such further actions as necessary to implement its terms.

PASSED AND ADOPTED by the Mayor and Council of the City of Tempe, Arizona, on _____, 2008.

Mayor

ATTEST:

City Clerk

Approved as to form:

City Attorney

LICENSE FOR PUBLIC PARKING

This License for Public Parking is entered into this 12th day of June, 2008 (the "Effective Date") between University Square Investors, LLC, an Arizona limited liability company ("Licensor"), and the City of Tempe, a municipal corporation ("Licensee").

RECITALS

- A. The Licensor owns the real property on the South East corner of Seventh Street and Myrtle Avenue in Tempe, Arizona more specifically described in Exhibit A hereto (the "Property").
- B. Licensee desires to construct and maintain a parking lot on the Property, and Licensor is willing to allow Licensee to do so, on the terms and conditions set forth below.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

- 1. License. Licensor hereby grants Licensee a license to construct, operate, and maintain a public parking lot on the Property, together with reasonable ingress and egress to and from the Property, and other similar activities ancillary to the construction and installation of the public parking lot and other improvements on the Property.
- 2. Existing Easements. This License is subject to all existing encumbrances of record, including easements and licenses to which the Property is subject. Licensor shall provide Licensee with copies of any surveys, title reports, geotechnical reports and other information pertaining to the Property and its condition, that are in Licensor's possession, to assist in the design and construction of the improvements.
- 3. Design and Construction Licensee shall, at its own cost and expense, diligently undertake to design, construct and build a parking lot on the Property, consisting of approximately 80 parking spaces, including lighting, landscaping and irrigation, paving and curbing, and parking meters (the "Improvements"). The Improvements shall comply with all applicable federal, state and local laws and regulations, unless Licensee obtains a waiver of any such law or regulation.

4. Operation and Maintenance. During the term of this License, Licensee shall maintain the Improvements in reasonably good condition and repair, including but not limited to, providing lighting, collection and maintenance of parking regulatory devices which may include meters and gates, signage and regular cleaning of trash and debris. Licensors hereby acknowledges that the Downtown Tempe Community (the "DTC") shall operate and maintain the parking lot in a manner similar to other parking lots maintained by the DTC in the downtown area.

5. Enforcement. Parking Enforcement shall be performed by the City of Tempe upon the Property herein described in accordance with Tempe City Code Chapter 19, Section 19-91-95, 100, 121-122, 132-133, 137, 141-143, any and all other applicable provisions of the Tempe City Codes, and in accordance with posted signage designating times and terms of public parking.

6. Term. The initial term of the License shall be for three years from the Effective Date. The term of this License may be extended by mutual written agreement of both parties. In no event shall any default or breach under this License entitle any party to seek or to enforce the cancellation, rescission, or termination in whole or in part of this License or of any of the rights herein granted except as stipulated in Paragraph 11 (Termination).

7. Fees. During the initial term of this License, provided that the Property and the Improvements are used to provide public parking, there shall be no charge for Licensee's use of the Property, and Licensors shall not be entitled to collect rent for the use of the Property and shall not be entitled to any revenue generated from the use of the Property or the Improvements. At least thirty (30) days prior to the expiration of the initial term, or upon termination as defined in Paragraph 10, Licensors and Licensee shall reevaluate all fees and revenues. If the parties agree to the imposition of any fee or revenue sharing arrangement, it shall be memorialized in a written agreement signed by both parties.

8. Prohibition Against Liens. Licensee shall not create a lien on or security interest in the Property or Licensee's interest under this License whether by mortgage, deed of trust, collateral assignment or otherwise. Licensee shall not permit any liens to be placed on the Property, but if the Property or any part thereof, or Licensee's interest therein, shall at any time during the term of this License become subject to any vendor's, mechanic's, laborer's, or materialmen's lien based upon the furnishing of material or labor to Licensee, Licensee shall cause the same, at Licensee's expense, to be discharged or bonded over within thirty (30) days after notice thereof. During the term of this License, Licensors shall not grant any licenses, easements or other rights in the Property that would impair Licensee's ability to use and occupy the Property in a manner consistent with this License.

9. Indemnification. During the term of this license, except to the extent caused by the negligence or willful misconduct of Licensor or its agents, employees or contractors, Licensee shall indemnify, hold harmless and defend Licensor for, from and against any claims, damages, expenses, liabilities or judgments, including reasonable attorneys' fees, that Licensor pays or becomes obligated to pay by reason of any demand, claim or assertion of liability or any claim or action founded thereon which arises out of Licensee's conduct of use of or activities on the Property.

10. Insurance. Licensee shall, at its expense maintain a general liability insurance policy or policies including automobile and premise liability coverage against claims for bodily injury, personal injury, and death or property damage occurring in, upon or about the Property, as well as worker's compensation insurance in amounts required by applicable law. The limitation of liability of such insurance shall not be less than \$2,000,000 combined single limit per occurrence and in the aggregate. Licensee may provide such coverage through self-insurance.

11. Termination. Licensor may terminate this License for any reason by delivering written notice of such termination to the Licensee, not less than ninety (90) days prior to the proposed termination date. Licensee shall remove the Improvements within 45 days after the termination date at no cost to the Licensor. Thereafter, possession of the Property shall be surrendered to Licensor.

12. Amendment. This License may only be amended by a written agreement executed by Licensor and Licensee.

13. Attorney's Fees. In the event that either party brings legal action to enforce any terms of this License, the prevailing party in said litigation shall be entitled to attorneys' fees in a reasonable amount, to be determined by the court sitting without a jury.

14. Time of Essence. Time shall be of the essence in the performance of every term, covenant, and condition of this License.

15. Headings. The section and paragraph headings contained herein are inserted only for convenience of reference and are in no way to be construed as a part of this License or as a limitation of the scope of the particular paragraph to which they refer.

16. Benefit. This License shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrator, legal representatives, successors, and permitted assigns.

17. Notices. Notices required or permitted to be given hereunder shall be sent to the Licensee at the addresses set forth below:

Licensee: City of Tempe
City Manager's Office
31 East 5th Street
Tempe, AZ 85281

With a copy to: City of Tempe
City Attorney's Office
21 East Sixth Street, Suite 201
Tempe, AZ 85281

Licensor: University Square Investors, LLC
Attn: Scott Turkington
c/o Saxa, Inc.
14287 N. 87th Street, Suite 220
Scottsdale, AZ 85260
Email: scottt@saxainc.com
Telephone: 480.365.1524
Fax: 480.365.1540

18. No Dedication. Nothing contained herein shall be deemed to constitute any dedication to the public or for public use of any portion of the Property.

19. Entire Agreement. This License represents the full, complete and entire agreement between the parties with respect to the subject matter hereof. There are no other understandings, oral or written, related to the subject matter of this License.

20. Counterparts. This License may be executed in counterparts, each of which shall be deemed to be an original, and all of which shall constitute one and the same instrument.

21. This Agreement is subject to 38-511.

{Signature pages follow}

IN WITNESS WHEREOF, the parties hereto have executed this License as of the date and year first above written.

LICENSEE:

CITY OF TEMPE, a municipal corporation

By: _____
Hugh L. Hallman, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

LICENSOR:

University Square Investors, LLC, an
Arizona limited liability company

By *Jim Riggs* 6-12-08
Jim Riggs, Manager

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this 12TH day of JUNE, 2008 before me, the undersigned
officer, personally appeared Jim Riggs, who acknowledged himself to be Manager of
UNIVERSITY SQUARE INVESTORS, LLC, an Arizona limited liability company:

✓ whom I know personally;
 whose identity was proven to me on the oath of ,
a credible witness by me duly sworn;
 whose identity I verified on the basis of his/her ,
and s/he, in such capacity, being authorized so to do, executed the foregoing instrument
for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Jan Weatherbee
Notary Public



Exhibit A The Property

Lots 5, 6, & 7 of Birchett Tract, according to the Plat of Record in the office of the Maricopa county Recorder, Maricopa County Arizona in Book 27 of Maps, Page 9.

